

REMARKS

The Amendment and Remarks are filed responsive to the office action dated February 17, 2011 in the above-referenced patent application. Claims 1-15, 19-27, 31-66, 68 and 70 were previously canceled. Claims 16 and 28 are cancelled, claims 17-18, 29-30, 67 and 69 are amended and new claims 71 and 72 are added herein. Thus, the claims presently under consideration are claims 17-18, 29-30, 67, 69, 71 and 72 as set forth herein. These claims are supported by the specification as filed, and Applicant believes that no new matter has been added. Applicant respectfully requests that the Examiner reconsider and withdraw the various grounds of rejection of the claims.

I. Prior Rejections under 35 USC 112, first and second paragraph

The scope of enablement rejection of claims 16-18, 28-30, and 69 under 35 USC 112, first paragraph has been withdrawn in view of the Amendment received by the US PTO on December 30, 2010. The rejection of claims 16-18, 65, 67, and 68 under 35 USC 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter has been withdrawn in view of the Amendment received by the US PTO on December 30, 2010.

II. New Rejection under 35 U.S.C. 112, Second Paragraph

Claim 16 has been rejected under 35 USC 112, second paragraph as indefinite, the Examiner states the phrase "determining a cell copy number of at least one gene" is unclear. Applicant does note that this language was originally taken from the Examiner's proposed language provided on page three of the Office Action dated August 5, 2010. Applicant has however cancelled claim 16 and provided new claim 71, thereby rendering this objection moot. Applicant further notes that determining the copy number of a gene comprising the nucleotide

sequence of SEQ ID NO: 1 in **normal** tissue does not necessarily require obtaining a normal tissue sample. So long as there the copy number is known for the noncancerous or non-precancerous state, the means of acquiring that knowledge is not important. The normal copy number may be accessed from a data source, may already be known to the caregiver, may be determined from normal tissue etc.

Claim 28 has been rejected under 35 USC 112, second paragraph as indefinite, the Examiner objects to the phrase "detecting in a sample from a patient expression of a gene ... wherein said expression is increased the copy number of said gene". Applicant has amended claim 28 herein, thereby rendering these rejections moot. Applicant notes that new claim 72 is directed to copy number and protein expression.

III. Conclusion

In view of the foregoing remarks, Applicant respectfully requests the timely allowance of the pending claims. Should the Examiner believe that any further action is necessary to place this application in better form for allowance, the Examiner is invited to contact Applicant's representative at either the telephone number listed below or Applicant's cell phone 443-831-2937. The commissioner is authorized to charge any required fees ("small entity" status) to Deposit Account No. 50-4364 (357074.00006).

Respectfully Submitted,

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